* **HIGH COURT OF DELHI AT NEW DELHI**

+ RFA No.75/2007 & CM Nos.1908, 1910/2007

Date of decision : 29th May, 2007.

BHARAT SANCHAR NIGAM LTD. ..... Appellant.
! Through : Mr. Sharat kapoor, Advocate

Versus

$ SH. TARA CHAND & ORS. . ... Respondents
^ Through : Mr.Arun Vohra,Advocate.
%

AND

RFA No.76/2007 & CM Nos.1911, 1913/2007

BHARAT SANCHAR NIGAM LTD. ..... Appellant.
! Through : Mr. Sharat kapoor, Advocate

Versus

SH. D.S. KHURANA & ORS. . ... Respondents
Through : Mr.Arun Vohra, Advocate.

AND

RFA No.77/2007 & CM Nos.1914/2007, 1916/2007

BHARAT SANCHAR NIGAM LTD. ..... Appellant.
! Through : Mr. Sharat kapoor, Advocate

Versus

KULDIP SINGH & ORS. . ... Respondents
Through : Mr.Arun Vohra, Advocate.

AND

RFA No.78/2007 & CM Nos.1917/2007, 1919/2007

BHARAT SANCHAR NIGAM LTD. ..... Appellant.

! Through : Mr. Sharat kapoor, Advocate

Versus

MRS. RANMEET KAUR & ORS. . ... Respondents
Through : Mr.Arun Vohra, Advocate.

CORAM:
HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MS. JUSTICE ARUNA SURESH

(1) Whether reporters of local paper may be allowed to see the judgment?

(2) To be referred to the reporter or not?

(3) Whether the judgment should be reported in the Digest ?

(Common order)

A.K. SIKRI, J. (Oral)

1. The appellants are the tenant of the respondents in respect of different portions of the same property, namely, Statesman House, Barakhmaba Road, New Delhi. After taking on rent various portions of the premises in the said building from different owners, the appellant Bharat Sanchar Nigam Ltd. was running its office. Four flats which are the subject matter of these appeals are on the first floor of the said building. Out of these four flats, two flats were vacated by the appellant. The lease deed executed between the parties contains identical terms and same rent. For the sake of convenience, we may refer to the facts as appeared in RFA No.75/2007. In this case, respondents are the owners of the flat bearing No.B-104, 1st floor Statesman House, Barakhamba Road, New Delhi. Lease Agreement

dated 13.12.2004 was executed between the respondents and the appellant in respect of the aforesaid flat as per which three years lease was granted to the appellant. Monthly rent was fixed @ Rs.95 per sq.ft. The total monthly rent in this manner comes to be Rs.85,880/-,. As per the respondents, besides the above rental, the appellant was also liable to pay maintenance charge to the Maintenance Society at the agreed charges @ Rs.14 per sq.ft. towards common service charges etc. and further separate maintenance agreement was entered into between the parties. This lease also contains a stipulation that the lease period can be extended for a further period of two terms of three years each on the option of the appellant with an increase of 20% of the monthly rental after every three years of the last paid. It was also stipulated that the appellant was required to inform about the renewal of the lease agreement by giving at least three months notice prior to the expiry of the first lease Agreement.

2. The first period of Agreement, in this manner, expires on 12.12.2004. The appellant continued to occupy the leased premises. According to the respondent, the appellant became liable to pay the rent after increasing the same by 20% as per the stipulation contained in this Agreement dated 13.12.2004. In this manner, the rent was to be @ Rs.114 per sq.ft. However, instead of paying the rent at the aforesaid rate, the appellant unilaterally and suo motu reduced the same to Rs.72.85 per sq. ft. The respondents in these circumstances,

filed a suit for the recovery of the arrears of rent claiming that they were entitled to the rent @114 per sq.ft. Since the appellant had started paying monthly rent calculated @72.85 per sq.ft., thereby making the total payment of Rs.65,856/- per month, therefore, the respondents claimed difference in the rental per month which according to them comes to Rs.37,200/-(Rs.114 per sq.ft minus 72.85 per sq.ft). The suit was filed under the provisions of Order XXXVII of the Code of Civil Procedure, 1908. The appellants were served with the summons of judgment thereafter filed application for leave to defend. This application has been dismissed by the learned trial court and the suit of the plaintiff is decreed allowing their claim holding that appellants were liable to pay rent @ Rs.114 per sq.ft w.e.f.13.12.2004. Similar order was passed in other three suits preferred by the respondents in other cases. Aggrieved by the said order, these appeals are filed by the appellants.

3. The learned trial court by passing the said judgment and decree has held that as per the Agreement, the respondents were entitled to stipulated increase of 20% per annum after the expiry of three years period and, therefore, the payment of rent @ Rs.114 per sq.ft. was proper. Learned Additional and District Judge has further held that it was not open to the appellant to reduce the rent unilaterally to Rs.72.85 paisa per sq.ft. and, therefore, according to the trial court and in view of the Agreement dated 13.12.2004, no

triable issue arises.

4. We may point out at this stage that some other flats owners in the same building had also filed a suit for possession and mesne profits against the appellant and in some of these suits decree for possession has been passed. The appeals were filed against those orders and in the appeal, statement was made by the learned counsel for the appellant that the appellant had taken decision to vacate those premises by 31.8.2007 and this Court has passed orders in those appeals granting time to the appellant to vacate the said flats by 31.8.2007. Of course, no suit for possession is filed by the respondents herein, therefore, obviously learned counsel for the appellant cannot make any such statement in these cases. However, it is possible that when the appellants are vacating the other portion of the premises, which the appellants took on rent from some other landlords, the appellant may adopt the same course of action in these cases as well.

5. We may state at the outset that though the trial court has passed the decree for arrears of rent on the basis that rental of the premises is increased to Rs.114 per sq.ft., learned counsel for the respondents on instructions from the respondents, who are also present in the court, had made a statement to the effect that respondents would confine their claim for arrears of rent to be calculated @ Rs.95 per sq.ft. which was the contractual rent agreed to in the unregistered lease deed dated 31.1.2001 even if clause related

to escalation in the said rent by 20% is not enforced.

6. In view of this concession given by the respondents, the only question which needs to be determined is as to whether it was open to the appellant to reduce the rent to Rs.72.85 paisa per sq.ft. w.e.f. 13.12.2004? The answer will be in negative. The only submission which is made by the learned counsel for the appellant, which was the argument raised before the trial court as well, is that the rental during that period had gone down substantially and, therefore, decision to reduce the rent was taken by the appellant which was based on the prevailing market rent, therefore the appellant paid rent to the respondents @ 72.85 paisa per sq.ft. Whether the market rent of the premises in question had gone down or not, is not the question before this Court to go into. The fact remains that there was an Agreement between the parties as per which the rent was fixed @ 95 per sq.ft. The Clause in the agreement was for increase of rent and not for decrease of rent. Therefore, any decision to decrease the rent has to be taken with the mutual consent of the parties as it amounts to novation of the contract entered into between the parties. After the expiry of the initial term, if the appellant wanted to continue in the said premises, such a decrease, therefore, could not have been the unilateral act on the part of the appellant and again in this manner it cannot bind the respondents at all.

7. Respondents would be entitled to receive the rent at the rate agreed upon, if not at escalated rates (which question as aforesaid is not gone into, in view of the concession given by the respondents herein). We, therefore, do not find any merit in these appeals which are accordingly dismissed. However, the decree of the trial court stands modified to the extent that arrears of rent shall be calculated on the basis that rental of the premises is Rs.95 per sq.ft. and not Rs.114 per sq.ft.

8. The appeals and all pending applications stand disposed of accordingly.

A.K.SIKRI, J.

ARUNA SURESH, J.

May 29, 2007
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